

Chapter 128

2017 EDITION

Trusts; Charitable Activities

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PREPARATION OF TRUSTS

128.001 Limitations on accepting payment for preparation of trust. (1) Except as provided in this section, a person may not accept anything of value in exchange for the preparation of a trust.

(2) Subsection (1) of this section does not apply to an attorney who charges and accepts a fee for the preparation of a trust for a client in the course of representing that client.

(3) Subsection (1) of this section does not apply to any trust company or financial institution as defined in ORS chapter 706.

(4) Subsection (1) of this section does not apply to a resulting or constructive trust, a business trust that provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment of a court, a liquidation trust, a trust for the primary purpose of paying dividends, interests, interest coupons, salaries, wages, pensions, profits or employee benefits of any kind, an instrument in which a person is nominee or escrowee for another person or a trust created in deposits in any financial institution.

(5) Nothing in this section authorizes any person to engage in the practice of law in violation of ORS 9.160. [1997 c.806 §1; 2003 c.576 §383]

128.003 [1977 c.614 §10; repealed by 2005 c.348 §128]

128.005 [1977 c.614 §1; 2003 c.576 §384; repealed by 2005 c.348 §128]

128.007 [1977 c.614 §2; 1995 c.157 §18; repealed by 2005 c.348 §128]

128.009 [1977 c.614 §3; 1981 c.915 §1; 1989 c.73 §1; 1993 c.228 §1; 1995 c.157 §19; 2003 c.84 §13; repealed by 2005 c.348 §128]

128.010 [Renumbered 128.055]

128.015 [1977 c.614 §4; 1993 c.228 §2; repealed by 2005 c.348 §128]

128.020 [Amended by 1969 c.267 §1; renumbered 128.057]

128.021 [1977 c.614 §5; 1995 c.157 §20; repealed by 2005 c.348 §128]

128.025 [1969 c.267 §3; renumbered 128.061]

128.026 [1977 c.614 §6; 1995 c.157 §21; repealed by 2005 c.348 §128]

128.030 [Amended by 1977 c.614 §13; renumbered 128.065]

128.031 [1977 c.614 §7; repealed by 2005 c.348 §128]

128.035 [1977 c.614 §8; repealed by 2005 c.348 §128]

128.040 [Repealed by 1977 c.614 §14]

128.041 [1977 c.614 §9; repealed by 2005 c.348 §128]

128.045 [1977 c.614 §11; repealed by 2005 c.348 §128]

128.047 [1993 c.226 §3; repealed by 2005 c.348 §128]

128.050 [Repealed by 1977 c.614 §14]

128.051 [1977 c.614 §12; repealed by 2005 c.348 §128]

128.055 [Formerly 128.010; repealed by 2005 c.348 §128]

128.057 [Formerly 128.020; 1979 c.382 §1; repealed by 1995 c.157 §26]

128.060 [Amended by 1973 c.827 §19; repealed by 1977 c.614 §14]

128.061 [1969 c.267 §3; formerly 128.025; repealed by 1979 c.382 §2]

128.065 [Formerly 128.030; 1995 c.157 §22; repealed by 2005 c.348 §128]

128.070 [Repealed by 1973 c.506 §46]

128.075 [1973 c.367 §16; renumbered 128.595]

128.080 [Amended by 1973 c.177 §2; repealed by 1973 c.506 §46]

PRIVATE FOUNDATION AND SPLIT INTEREST TRUSTS

128.085 Limitations on trustee's administration of "private foundation" trust. Notwithstanding any provision to the contrary in the governing instrument or any law of this state, the trustee of a trust which is a "private foundation" as defined in section 509 of the Internal Revenue Code of 1954 (including nonexempt charitable trusts as defined in section 4947 (a) (1) of the Internal Revenue Code of 1954) shall not engage in any act of self dealing as defined in section 4941 (d) of the Internal Revenue Code of 1954; shall distribute its income and, when necessary, amounts from principal at such time and in such manner as not to subject the trust to the taxes on failure to distribute income imposed by section 4942 of the Internal Revenue Code of 1954; shall not retain any excess business holdings as defined in section 4943 (c) of the Internal Revenue Code of 1954; shall not make any investments in such manner as to subject the trust to the taxes on investments which jeopardize charitable purpose imposed by section 4944 of the Internal Revenue Code of 1954; and shall not make any taxable expenditures as defined in section 4945 (d) of the Internal Revenue Code of 1954. [1971 c.197 §1]

128.090 Limitations on trustee's administration of "split-interest" trust. (1) Notwithstanding any provision to the contrary in the governing instrument or any law of this state, the trustee of a trust which is a "split-interest trust" as defined in section 4947 (a) (2) of the Internal Revenue Code of 1954, shall not engage in any act of self dealing as defined in section 4941 (d) of the Internal Revenue Code of 1954; shall not retain any excess business holdings as defined in section 4943 (c) of the Internal Revenue Code of 1954, unless the trust is one exempted from the requirements of section 4943 by section 4947 (b) (3) of the Internal Revenue Code of 1954; shall not make any investment in such manner as to subject the trust to the taxes on investments which jeopardize charitable purpose imposed by section 4944 of the Internal Revenue Code of 1954, unless the trust is one exempted from

the requirements of section 4944 by section 4947 (b) (3) of the Internal Revenue Code of 1954; and shall not make any taxable expenditures as defined in section 4945 (d) of the Internal Revenue Code of 1954.

(2) This section shall not apply with respect to:

(a) Any amounts payable under the terms of a trust to income beneficiaries, unless a deduction was allowed under section 170 (f) (2) (B), section 2055 (e) (2) (B), or section 2522 (c) (2) (B) of the Internal Revenue Code of 1954;

(b) Any amounts in trust other than amounts for which a deduction was allowed under section 170, section 545 (b) (2), section 556 (b) (2), section 642 (c), section 2055, section 2106 (a) (2) or section 2522 of the Internal Revenue Code of 1954, if such other amounts are segregated from amounts for which no deduction was allowable; or

(c) Any amounts transferred in trust before May 27, 1969. [1971 c.197 §2]

128.095 Trustee may amend governing instrument of “private foundation” or “split-interest” trust with prior consent of Attorney General and benefited organizations. The trustee of a trust which is a private foundation to which ORS 128.085 applies or a split-interest trust to which ORS 128.090 applies may, with the prior consent of the Attorney General, amend the terms of the governing instrument to the extent necessary (1) to assure conformity of the governing instrument with the requirements for exemption from the taxes imposed by sections 4941 to 4945 of the Internal Revenue Code of 1954, including amendments which broaden, extend, reduce or limit the charitable purposes for which the trust is administered, or (2) to terminate the status of the trust as a private foundation in a manner described in section 507 (b) (1) of the Internal Revenue Code of 1954. Prior to giving consent, the Attorney General shall determine that the proposed amendments are necessary or appropriate to achieve the charitable purposes of the trust. If the trust is for the exclusive benefit of one or more charitable organizations, the trustee shall also obtain the prior consent of such organizations prior to amending the terms of the governing instrument in the manner set forth in this section. [1971 c.197 §3]

DEPOSIT OF SECURITIES IN CLEARING CORPORATIONS

128.100 Authority of fiduciary to deposit securities in clearing corporation. (1) Notwithstanding any other provision of law, any fiduciary holding securities in a fiduciary capacity, any financial institution

or trust company holding securities as a custodian or managing agent, and any financial institution or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities in a clearing corporation as defined in ORS 78.1020. When the securities are deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities of the same class deposited in the clearing corporation by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of the fiduciary and the records of the financial institution or trust company acting as custodian, as managing agent or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are deposited. Ownership of, and other interests in, the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing the securities. A financial institution or trust company depositing securities pursuant to this section shall be subject to the rules and regulations as, in the case of state-chartered institutions, the Department of Consumer and Business Services and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue. A financial institution or a trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities deposited by the financial institution or trust company in the clearing corporation for the account of the fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as the fiduciary.

(2) This section shall apply to any fiduciary holding securities in a fiduciary capacity, and to any financial institution or trust company holding securities as a custodian, managing agent or custodian for a fiduciary, acting on October 5, 1973, or who thereafter may act regardless of the date of the agreement, instrument or court order by which it is appointed and regardless of whether or not the fiduciary, custodian, managing agent or custodian for a fiduciary owns capital stock of the clearing corporation. [1973 c.365 §§1,2; 1985 c.676 §59; 1985 c.762 §177; 1997 c.631 §414]

- 128.102** [1993 c.226 §5; 1997 c.659 §1; repealed by 2005 c.348 §128]
- 128.110** [Amended by 1979 c.284 §108; repealed by 1981 c.66 §8]
- 128.115** [1981 c.66 §1; repealed by 2005 c.348 §128]
- 128.120** [Repealed by 1981 c.66 §8]
- 128.125** [1981 c.66 §2; repealed by 2005 c.348 §128]
- 128.130** [Amended by 1979 c. 284 §109; repealed by 1981 c.66 §8]
- 128.135** [1981 c.66 §3; 1993 c.222 §6; 2003 c.279 §33a; repealed by 2005 c.348 §128]
- 128.140** [Repealed by 1981 c.66 §8]
- 128.145** [1981 c.66 §4; repealed by 2005 c.348 §128]
- 128.150** [Repealed by 1981 c.66 §8]
- 128.155** [1981 c.66 §5; 1991 c.331 §42; 1997 c.631 §415; repealed by 2005 c.348 §128]
- 128.160** [Repealed by 1981 c.66 §8]
- 128.165** [1981 c.66 §6; repealed by 2005 c.348 §128]
- 128.170** [Repealed by 1981 c.66 §8]
- 128.175** [1981 c.66 §7; repealed by 2005 c.348 §128]
- 128.177** [1993 c.222 §2; repealed by 2005 c.348 §128]
- 128.179** [1993 c.222 §3; repealed by 2005 c.348 §128]
- 128.180** [Repealed by 1981 c.66 §8]
- 128.181** [1993 c.222 §4; repealed by 2005 c.348 §128]
- 128.183** [1993 c.222 §5; repealed by 2005 c.348 §128]
- 128.185** [1993 c.222 §7; repealed by 2005 c.348 §128]
- 128.190** [Repealed by 1981 c.66 §8]
- 128.192** [1995 c.157 §1; repealed by 2005 c.348 §128]
- 128.194** [1995 c.157 §2; repealed by 2005 c.348 §128]
- 128.196** [1995 c.157 §3; repealed by 2005 c.348 §128]
- 128.198** [1995 c.157 §4; repealed by 2005 c.348 §128]
- 128.200** [Repealed by 1981 c.66 §8]
- 128.202** [1995 c.157 §5; repealed by 2005 c.348 §128]
- 128.204** [1995 c.157 §§6,7; repealed by 2005 c.348 §128]
- 128.206** [1995 c.157 §8; repealed by 2005 c.348 §128]
- 128.208** [1995 c.157 §9; repealed by 2005 c.348 §128]
- 128.210** [Repealed by 1981 c.66 §8]
- 128.212** [1995 c.157 §10; repealed by 2005 c.348 §128]
- 128.214** [1995 c.157 §11; repealed by 2005 c.348 §128]
- 128.216** [1995 c.157 §§12,14; repealed by 2005 c.348 §128]
- 128.218** [1995 c.157 §13; repealed by 2005 c.348 §128]
- 128.220** [Repealed by 1981 c.66 §8]
- 128.230** [Repealed by 1981 c.66 §8]
- 128.232** [1995 c.679 §1; repealed by 2005 c.348 §128]
- 128.234** [1995 c.679 §2; repealed by 2005 c.348 §128]
- 128.236** [1995 c.679 §3; repealed by 2005 c.348 §128]
- 128.238** [1995 c.679 §4; repealed by 2005 c.348 §128]
- 128.240** [Repealed by 1981 c.66 §8]
- 128.242** [1995 c.679 §5; repealed by 2005 c.348 §128]
- 128.244** [1995 c.679 §6; repealed by 2005 c.348 §128]
- 128.246** [1995 c.679 §7; repealed by 2005 c.348 §128]
- 128.250** [Amended by 1979 c.284 §110; repealed by 1981 c.66 §8]
- 128.255** [1997 c.151 §4; repealed by 2005 c.348 §128]
- 128.256** [2001 c.593 §1; 2005 c.348 §99; renumbered 130.350 in 2005]
- 128.258** [2001 c.593 §1a; 2005 c.348 §100; renumbered 130.355 in 2005]
- 128.260** [Amended by 1979 c.284 §111; repealed by 1981 c.66 §8]
- 128.262** [2001 c.593 §2; renumbered 130.360 in 2005]
- 128.264** [2001 c.593 §3; 2005 c.348 §101; renumbered 130.365 in 2005]
- 128.266** [2001 c.593 §4; 2003 c.14 §45; 2005 c.348 §102; renumbered 130.370 in 2005]
- 128.268** [2001 c.593 §5; renumbered 130.375 in 2005]
- 128.270** [Repealed by 1981 c.66 §8]
- 128.272** [2001 c.593 §6; 2005 c.348 §103; renumbered 130.380 in 2005]
- 128.274** [2001 c.593 §7; renumbered 130.385 in 2005]
- 128.276** [2001 c.593 §7a; renumbered 130.390 in 2005]
- 128.278** [2001 c.593 §8; renumbered 130.395 in 2005]
- 128.280** [2001 c.593 §9; 2005 c.348 §121; renumbered 130.400 in 2005]
- 128.282** [2001 c.593 §9a; renumbered 130.405 in 2005]
- 128.284** [2001 c.593 §9b; renumbered 130.410 in 2005]
- 128.286** [2001 c.593 §9c; renumbered 130.415 in 2005]
- 128.288** [2001 c.593 §9d; 2005 c.348 §104; renumbered 130.420 in 2005]
- 128.290** [2001 c.593 §10; 2005 c.348 §105; renumbered 130.425 in 2005]
- 128.292** [2001 c.593 §11; renumbered 130.430 in 2005]
- 128.294** [2001 c.593 §12; 2005 c.348 §106; renumbered 130.435 in 2005]
- 128.296** [2001 c.593 §13; renumbered 130.440 in 2005]
- 128.298** [2001 c.593 §14; renumbered 130.445 in 2005]
- 128.300** [2001 c.593 §15; 2005 c.348 §107; renumbered 130.450 in 2005]

UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

128.305 Short title. ORS 128.305 to 128.336 may be cited as the Uniform Prudent Management of Institutional Funds Act. [2007 c.554 §10]

128.308 [2001 c.636 §1; repealed by 2005 c.348 §128]

128.310 [1975 c.707 §11; repealed by 2007 c.554 §11]

128.315 [1975 c.707 §2; repealed by 2007 c.554 §11]

128.316 Definitions for ORS 128.305 to 128.336. As used in ORS 128.305 to 128.336:

(1) “Charitable purpose” means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose or any other purpose the achievement of which is beneficial to the community.

(2) “Endowment fund” means an institutional fund or part of an institutional fund that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. “Endowment fund” does not include assets that an institution designates as an endowment fund for the institution’s own use.

(3) “Gift instrument” means a record or records, including an institutional solicitation, under which property is granted to, transferred to or held by an institution as an institutional fund.

(4) "Institution" means:

(a) A person, other than an individual, organized and operated exclusively for charitable purposes;

(b) A government or governmental subdivision, agency or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; and

(c) A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) "Institutional fund" means a fund held by an institution exclusively for charitable purposes. "Institutional fund" does not include:

(a) Program-related assets;

(b) A fund held for an institution by a trustee that is not an institution;

(c) A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund; or

(d) A fund managed by the State Treasurer, moneys held by the State Treasurer for investment or moneys managed or held for investment by or on behalf of the State Treasurer under ORS chapter 293 or 348.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(7) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. [2007 c.554 §1]

128.318 Standard of conduct in managing and investing institutional fund. (1) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(2) In addition to complying with the duty of loyalty imposed by law other than ORS 128.305 to 128.336, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(3) In managing and investing an institutional fund, an institution:

(a) May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution and the skills available to the institution; and

(b) Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(4) An institution may pool two or more institutional funds for purposes of management and investment.

(5) Except as otherwise provided by a gift instrument, the following rules apply:

(a) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(A) General economic conditions;

(B) The possible effect of inflation or deflation;

(C) The expected tax consequences, if any, of investment decisions or strategies;

(D) The role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) The expected total return from income and the appreciation of investments;

(F) Other resources of the institution;

(G) The needs of the institution and the fund to make distributions and to preserve capital; and

(H) An asset's special relationship or special value, if any, to the charitable purposes of the institution.

(b) Management and investment decisions about an individual asset must be made not in isolation, but instead in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(c) Except as otherwise provided by law other than ORS 128.305 to 128.336, an institution may invest in any kind of property or type of investment consistent with this section.

(d) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(e) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the

purposes, terms and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of ORS 128.305 to 128.336.

(f) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds. [2007 c.554 §2]

128.320 [1975 c.707 §3; 1995 c.79 §47; repealed by 2007 c.554 §11]

128.322 Appropriation for expenditure or accumulation of endowment fund; rules of construction. (1) Subject to subsection (4) of this section and the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (a) The duration and preservation of the endowment fund;
- (b) The purposes of the institution and the endowment fund;
- (c) General economic conditions;
- (d) The possible effect of inflation or deflation;
- (e) The expected total return from income and the appreciation of investments;
- (f) Other resources of the institution; and
- (g) The investment policy of the institution.

(2) To limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section, a gift instrument must specifically state the limitation.

(3) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends" or "rents, issues or profits," or "to preserve the principal intact," or words of similar import:

- (a) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(b) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section.

(4) The appropriation for expenditure in any year of an amount greater than seven percent of the fair market value of an endowment fund, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than three years immediately preceding the year in which the appropriation for expenditure was made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for fewer than three years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:

(a) Apply to an appropriation for expenditure permitted under law other than ORS 128.305 to 128.336 or by the gift instrument; or

(b) Create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to seven percent of the fair market value of the endowment fund. [2007 c.554 §3]

128.325 [1975 c.707 §4; repealed by 2007 c.554 §11]

128.326 Delegation of management and investment functions. (1) Subject to any specific limitation set forth in a gift instrument or in law other than ORS 128.305 to 128.336, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

- (a) Selecting an agent;
- (b) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(3) An institution that complies with subsection (1) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(4) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state,

an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(5) An institution may delegate management and investment functions to its committees, officers or employees as authorized by law of this state other than ORS 128.305 to 128.336. [2007 c.554 §4]

128.328 Release or modification of restrictions on management, investment or purpose. (1) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(2) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, the restriction impairs the management or investment of the fund or, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(3) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard.

(4) If an institution determines that a restriction contained in a gift instrument on the management, investment or purpose of an institutional fund is unlawful, impracticable, impossible to achieve or wasteful, the institution, within 60 days after notification to the Attorney General, may release or modify the restriction, in whole or part, if:

(a) The institutional fund subject to the restriction has a total value of less than \$25,000;

(b) More than 20 years have elapsed since the fund was established; and

(c) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

(5) The provisions of this section apply to property and other interests given by private donors as a gift to a public body, as defined by ORS 174.109, or to any instrumentality of a public body. This subsection does not limit any other authority that a public body or an instrumentality of a public body may have to release or modify a restriction contained in a gift instrument on the management, investment or purpose of funds. [2007 c.554 §5]

128.330 [1975 c.707 §5; repealed by 2007 c.554 §11]

128.332 Reviewing compliance. Compliance with ORS 128.305 to 128.336 is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight. [2007 c.554 §6]

128.334 Relation to Electronic Signatures in Global and National Commerce Act. ORS 128.305 to 128.336 modify, limit and supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but do not modify, limit or supersede 15 U.S.C. 7001(a), or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b). [2007 c.554 §8]

128.335 [1975 c.707 §6; repealed by 2007 c.554 §11]

128.336 Uniformity of application and construction. In applying and construing ORS 128.305 to 128.336, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the Uniform Prudent Management of Institutional Funds Act. [2007 c.554 §9]

128.340 [1975 c.707 §7; repealed by 2007 c.554 §11]

128.345 [1975 c.707 §8; repealed by 2007 c.554 §11]

128.350 [1975 c.707 §10; repealed by 2007 c.554 §11]

128.355 [1975 c.707 §9; repealed by 2007 c.554 §11]

128.370 [2003 c.84 §1; 2005 c.348 §108; renumbered 130.520 in 2005]

128.375 [2003 c.84 §2; 2005 c.348 §111; renumbered 130.530 in 2005]

128.378 [2003 c.84 §3; 2005 c.348 §112; renumbered 130.535 in 2005]

128.380 [2003 c.84 §4; renumbered 130.540 in 2005]

128.382 [2003 c.84 §5; renumbered 130.545 in 2005]

128.385 [2003 c.84 §6; 2005 c.348 §113; renumbered 130.550 in 2005]

128.388 [2003 c.84 §7; 2005 c.348 §114; renumbered 130.555 in 2005]

128.390 [2003 c.84 §8; 2005 c.348 §115; renumbered 130.560 in 2005]

128.392 [2003 c.84 §9; renumbered 130.565 in 2005]

128.395 [2003 c.84 §10; 2005 c.348 §116; renumbered 130.570 in 2005]

128.397 [2003 c.84 §11; 2005 c.348 §117; renumbered 130.575 in 2005]

128.398 [2003 c.84 §12; 2005 c.22 §99; 2005 c.348 §118; renumbered 130.240 in 2005]

128.400 [1987 c.813 §3; 1997 c.631 §416; 2001 c.796 §7; renumbered 97.923 in 2001]

128.405 [1987 c.813 §1; 2001 c.796 §16; renumbered 97.925 in 2001]

128.407 [1987 c.813 §2; 2001 c.796 §17; renumbered 97.927 in 2001]

128.410 [1953 c.639 §1; 1955 c.524 §1; 1959 c.691 §1; 1965 c.611 §14; 1967 c.359 §681; 1979 c.661 §1; repealed by 1987 c.813 §17]

128.412 [1959 c.691 §2; 1967 c.359 §682; 1985 c.207 §23; 1987 c.813 §11; 1991 c.331 §43; 1997 c.631 §417; 1999 c.68 §1; 2001 c.796 §8; renumbered 97.929 in 2001]

128.414 [1993 c.467 §3; 1995 c.325 §2; 2001 c.796 §9; renumbered 97.931 in 2001]

128.415 [1953 c.639 §2; 1955 c.524 §2; 1959 c.691 §3; 1981 c.484 §1; 1985 c.207 §24; 1987 c.214 §1; 1987 c.813 §12; 1989 c.171 §14; 2001 c.796 §10; renumbered 97.937 in 2001]

128.420 [1981 c.719 §9a; 1983 c.810 §26; 1987 c.158 §18b; repealed by 1987 c.813 §17]

128.421 [1987 c.813 §4; 1989 c.1048 §3; 2001 c.796 §11; renumbered 97.939 in 2001]

128.423 [1987 c.813 §5; 1989 c.1048 §1; 1995 c.720 §1; 2001 c.796 §12; renumbered 97.941 in 2001]

128.425 [1987 c.813 §6; 1989 c.1048 §2; 1995 c.720 §2; 2001 c.796 §13; renumbered 97.943 in 2001]

128.430 [1987 c.813 §7; 2001 c.796 §14; renumbered 97.944 in 2001]

128.435 [1987 c.813 §8; 1995 c.144 §8; 2001 c.796 §15; renumbered 97.945 in 2001]

128.440 [1987 c.813 §8a; 2001 c.796 §18; renumbered 97.946 in 2001]

128.460 [1971 c.182 §1; repealed by 2005 c.348 §128]

128.470 [1971 c.182 §2; repealed by 2005 c.348 §128]

128.480 [1971 c.182 §3; repealed by 2005 c.348 §128]

128.490 [1971 c.182 §4; repealed by 2005 c.348 §128]

128.500 [1971 c.182 §5; repealed by 2005 c.348 §128]

EMPLOYEES' TRUSTS

128.510 Definitions for ORS 128.520. As used in ORS 128.520, “employees’ trust” means a trust of real or personal property forming part of a pension, profit sharing, stock bonus, annuity, disability or death benefit plan of an employer or group of employers for the benefit of the employees of the employer or group of employers, to which contributions are made by such employers or employees, or both, for the purpose of distributing income or principal, or both, to such employees or the beneficiaries of such employees. [1955 c.586 §1]

128.520 Employees’ trust may be in perpetuity; accumulation of income. An employees’ trust may be permitted to accumulate for such time as may be necessary to accomplish the purpose for which it is created, and is not invalid as violating any rule of law against perpetuities or the suspension of the power of alienation of title to property. The income from any property held in an employees’ trust may continue in perpetuity or in accordance with the terms of such trust, and the plan of which such trust forms a part, for such time as may be

necessary to accomplish the purpose for which such trust is created. [1955 c.586 §2]

BUSINESS TRUSTS

128.560 “Business trust” described. A “business trust” is any association, including a real estate investment trust, engaged in or operating a business under a written trust agreement or declaration of trust, the beneficial interest under which is divided into transferable certificates of participation or shares, other than a trust engaged solely in exercising the voting rights pertaining to corporate shares or other securities in accordance with the terms of a written instrument. [1971 c.491 §1]

128.565 Business trust permitted. A business trust is permitted as a recognized form of association for the conduct of business within the State of Oregon. [1971 c.491 §2]

128.570 Business trusts and trustees not subject to bank and trust company regulations. Neither a business trust nor the trustees of such trust are subject to the provisions of ORS chapters 706, 707 and 709. [1971 c.491 §3; 1997 c.631 §418]

128.573 Forms; rules. Upon request, the Secretary of State may furnish forms for documents required or permitted to be filed under ORS 128.560 to 128.600. The Secretary of State may by rule require the use of the forms. [1995 c.215 §23]

128.575 Filing with Office of Secretary of State required; fees; amendments. (1) Any business trust desiring to do business in this state shall first submit to the Office of Secretary of State a copy of the trust instrument creating the trust and any subsequent amendments to the trust and a document setting forth:

(a) The business trust name and the state or country of formation;

(b) The names and addresses of the business trust’s trustees;

(c) The physical street address of the business trust’s registered office in this state, which must be a location at which process may be personally served on the registered agent and that may not be a commercial mail receiving agency, a mail forwarding business or a virtual office, and the name of the registered agent;

(d) A mailing address to which the Secretary of State may mail notices; and

(e) Any additional identifying information that the Secretary of State by rule may require.

(2) The filing described in subsection (1) of this section must be accompanied by the applicable filing fee.

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(3) If the Secretary of State finds that the document contains the required information, the Secretary of State, when all fees have been paid, shall file the trust instrument and document and return an acknowledgment of filing to the sender.

(4) If a business trust amends a trust instrument, the business trust shall submit for filing a copy of the amendment to the Office of Secretary of State. The amendment must set forth:

(a) The name of the business trust as shown on the records of the Office of Secretary of State; and

(b) The information as changed. [1971 c.491 §4; 1973 c.367 §12; 1985 c.351 §21; 1985 c.728 §81a; 1987 c.94 §128; 1995 c.215 §24; 1999 c.486 §18; 2017 c.705 §30]

128.580 Business trusts subject to certain corporate laws. Any business trust shall be subject to such provisions of law, now or hereafter enacted, with respect to domestic and foreign corporations, respectively, as relate to the issuance of securities, filing of required statements or reports, service of process, general grants of power to act, right to sue and be sued, limitation of individual liability of shareholders and rights to acquire, mortgage, sell, lease, operate and otherwise to deal in real and personal property. Except as otherwise provided in its trust agreement or declaration of trust, or any amendments thereto, any business trust shall also be subject to the other provisions of ORS chapter 60 and other rights and duties existing under the common law and statutes of this state applicable to domestic and foreign corporations. Title to any real or personal property may be held in the name of the trust, one or more of the trustees or any other person as nominee. [1971 c.491 §5; 1973 c.367 §13; 1979 c.208 §6; 1987 c.94 §99]

128.585 Personal liability of trustees, shareholders or beneficiaries of business trust. The trustees, shareholders or beneficiaries of a business trust shall not, as such, be personally liable for any obligations of such business trust arising after June 25, 1971. Persons becoming trustees, shareholders or beneficiaries after June 25, 1971, shall not be personally liable, as such, for obligations of the business trust existing on June 25, 1971. [1971 c.491 §6; 1973 c.367 §14]

128.590 Filing of trust instrument as conclusive evidence of compliance with laws; exception. For purposes of ORS 128.585, filing of the trust instrument by the Secretary of State shall be conclusive evidence that all conditions precedent required to be performed by the business trust have been complied with and that the business trust is authorized to do business in this state, except as against this state in a proceeding to cancel or revoke the filing for vi-

olations of the provisions of ORS 128.580. [1971 c.491 §7; 1985 c.728 §82]

128.595 Annual report; due date; content; notice of requirement; effect of failure to file. (1) A business trust by the trust's anniversary date shall deliver to the office of the Secretary of State for filing an annual report accompanied by the annual fee.

(2) The annual report must contain:

(a) The name of the business trust and the state or country under the law of which the business trust is formed;

(b) The names and addresses of the business trust's trustees;

(c) The physical street address of the business trust's registered office in this state, which must be a location at which process may be personally served on the registered agent and which may not be a commercial mail receiving agency, a mail forwarding business or a virtual office, and the name of the trust's registered agent at the registered office;

(d) A mailing address to which the Secretary of State may mail notices;

(e) A description of the primary business activity of the business trust; and

(f) Any additional identifying information that the Secretary of State may require by rule.

(3) The annual report must be on forms prescribed and furnished by the Secretary of State. The information contained in the annual report must be current as of 30 days before the anniversary of the business trust.

(4) The Secretary of State shall mail the report form to any address shown for the business trust in the current records of the office of the Secretary of State. The business trust's failure to receive the report form from the Secretary of State does not relieve the business trust of the trust's duty under this section to deliver a report to the office.

(5) If the Secretary of State finds the report conforms to the requirements of this section, the Secretary of State shall file the report.

(6) If the Secretary of State finds that the annual report does not conform to the requirements of this section, the Secretary of State shall return the report to the business trust. The business trust shall correct the annual report and return the corrected report to the Secretary of State within 45 days after the Secretary of State returns the report.

(7) If a business trust has not filed the report by the reporting date or has not filed a corrected report within the 45-day period,

the Secretary of State shall send to the business trust a final notice advising that a report has not been filed and the Secretary of State, therefore, assumes that the business trust is no longer active unless a report is filed within 45 days after the mailing of the final notice.

(8) Not less than 45 days after the mailing date of the final notice specified in subsection (7) of this section, the Secretary of State may assume and note on the records of the Secretary of State that the business trust is inactive. [Formerly 128.075; 1983 c.717 §29; 1985 c.351 §22; 1985 c.728 §82b; 1987 c.94 §130; 1987 c.843 §18; 1993 c.190 §17; 1995 c.215 §25; 2007 c.186 §17; 2011 c.147 §25; 2013 c.158 §33; 2017 c.705 §31]

128.597 Inactivation of business trust.

The Secretary of State may commence a proceeding to inactivate the trust instrument of a business trust if:

(1) The business trust does not pay when due any fees imposed by ORS 128.560 to 128.600;

(2) The business trust does not deliver its annual report to the Secretary of State when due;

(3) The business trust is without a registered agent or registered office in this state;

(4) The business trust does not notify the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned or that its registered office has been discontinued; or

(5) The business trust's period of duration stated in the trust instrument expires. [1995 c.215 §27]

128.599 Reinstatement of business trust following inactivation. (1) A business trust that the Secretary of State inactivated under ORS 128.597 may apply to the Secretary of State for reinstatement within five years from the date of inactivation. The application must state:

(a) The name of the business trust and effective date of the business trust's administrative inactivation; and

(b) That the ground or grounds for inactivation either did not exist or have been eliminated.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section, that the information is correct and that the business trust's name satisfies the requirements of ORS 60.094, the Secretary of State shall reinstate the business trust.

(3) When effective, the reinstatement relates back to and takes effect as of the effective date of the administrative inactivation and the business trust is considered to resume carrying on the business

trust's business as if the administrative inactivation had never occurred.

(4) The Secretary of State may waive the requirement under subsection (1) of this section that the business trust apply for reinstatement within five years after the date of administrative inactivation if the business trust requests the waiver and provides evidence of the business trust's continued existence as an active concern during the period of administrative inactivation. [1995 c.215 §28; 2011 c.147 §26]

128.600 Filing, service, copying and certification fees. The Secretary of State shall collect the fees described in ORS 56.140 for each document delivered for filing under ORS 128.560 to 128.600 and for process served on the secretary under ORS 128.560 to 128.600. The secretary may collect the fees described in ORS 56.140 for copying any public record under ORS 128.560 to 128.600, certifying the copy or certifying to other facts of record under ORS 128.560 to 128.600. [1987 c.94 §129; 1991 c.132 §14; 1995 c.215 §26; 1999 c.652 §15]

CHARITABLE TRUST AND CORPORATION ACT

128.610 Short title. ORS 128.610 to 128.769 may be cited as the Charitable Trust and Corporation Act. [1963 c.583 §1; 1971 c.589 §1; 1981 c.593 §1; 1985 c.729 §25; 1985 c.730 §4]

128.620 Definitions for ORS 128.610 to 128.769. As used in ORS 128.610 to 128.769:

(1) "Charitable corporation" means any nonprofit corporation organized under the laws of this state for charitable or eleemosynary purposes and any similar foreign corporation doing business or holding property in this state for such purposes. The mere making of grants or donations to institutions or beneficiaries within the State of Oregon, or the investigation of applicants for such grants or donations, does not constitute doing business in this state. However, the solicitation of funds for charitable purposes in this state shall constitute doing business therein.

(2) "Charitable fiduciary" means an officer, director, trustee or other fiduciary of a charitable organization, or a person in possession of funds for one or more charitable purposes.

(3) "Charitable organization" includes charitable corporations, trustees and other charitable organizations not specifically exempted from the application of ORS 128.610 to 128.769.

(4) "Charitable purpose" means any purpose to promote the well-being of the public at large, or for the benefit of an indefinite number of persons, including but not limited

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to educational, literary, or scientific purposes, or for the prevention of cruelty to children or animals, or for the benefit of religion, rehabilitation services, public recreation, civic improvement, or services which lessen the burdens of government.

(5) "Religious corporation or organization" means any organized church or group organized for the purpose of divine worship, religious teaching, or other directly ancillary purposes.

(6) "Trustee" means:

(a) Any individual, group of individuals, corporation or other legal entity holding property in trust pursuant to any charitable trust;

(b) Any corporation that has accepted property to be used for a particular charitable corporate purpose as distinguished from the general purposes of the corporation; and

(c) A corporation formed for the administration of a charitable trust, pursuant to the directions of the settlor or at the instance of the trustee.

(7) "Willfully" means committing an act when it is known or should be known by the actor that the act is a violation of law. [1963 c.583 §§3,4; 1971 c.589 §2; 1981 c.593 §2; 1985 c.730 §5; 1989 c.334 §1; 2007 c.571 §2; 2014 c.8 §1]

128.630 Application of ORS 128.610 to 128.769. (1) ORS 128.610 to 128.769 apply to all charitable organizations holding property for charitable purposes over which the state or the Attorney General has enforcement or supervisory powers.

(2) ORS 128.610 to 128.769 shall apply regardless of any contrary provisions of any instrument. [1963 c.583 §§2,14; 1971 c.589 §3; 1981 c.593 §3; 1985 c.729 §27; 1985 c.730 §6; 2007 c.571 §3]

128.640 Exemptions from application of ORS 128.610 to 128.769. (1) ORS 128.610 to 128.769 do not apply to the United States, any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or to any of their agencies or governmental subdivisions.

(2) ORS 128.650 to 128.670 and 128.720 do not apply to:

(a) Any religious corporation sole or other religious corporation or organization which holds property for religious purposes, or to any officer, director or trustee thereof who holds property for like purposes;

(b) A cemetery that is registered with the State Mortuary and Cemetery Board under ORS 692.275 or a historic cemetery listed with the Oregon Commission on Historic Cemeteries under ORS 97.782; or

(c) A trustee that holds property for charitable purposes in the event that the sole beneficiary of a charitable remainder trust

serves as trustee. [1963 c.583 §5; 1971 c.589 §4; 1981 c.593 §4; 1985 c.730 §7; 1989 c.334 §2; 1999 c.731 §10; 2003 c.173 §8; 2016 c.106 §40]

128.650 Register of charitable organizations; authority of Attorney General to maintain register. The Attorney General shall establish and maintain a register of charitable organizations subject to ORS 128.610 to 128.769 and of the particular trust or other relationship under which the charitable organizations hold property for charitable purposes and, to that end, may conduct whatever investigation is necessary, and shall obtain from public records, court officers, taxing authorities, trustees, and other sources, whatever information, copies of instruments, reports and records that are needed for the establishment and maintenance of the register. [1963 c.583 §6; 1971 c.589 §5; 1981 c.593 §5; 1985 c.729 §29; 1985 c.730 §8; 2007 c.571 §4]

128.660 Filing of registration statement and articles of incorporation or other instrument with Attorney General. Every charitable organization subject to ORS 128.610 to 128.769 that has received property for charitable purposes shall file with the Attorney General, upon receiving possession or control of such property:

(1) A registration statement in the form and with the information designated by the Attorney General by rule; and

(2) A copy of the articles of incorporation, trust agreement or other instrument providing for title, powers or duties. [1963 c.583 §7; 1971 c.589 §6; 1981 c.593 §6; 2007 c.571 §5; 2014 c.8 §2]

128.670 Filing of reports; rules; fees; authority of Attorney General relating to reports; civil penalty. (1) Except as otherwise provided, every charitable organization subject to ORS 128.610 to 128.769 shall, in addition to filing copies of the instruments previously required, file with the Attorney General annual written reports setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the corporation or trustee.

(2) The Attorney General may classify trusts and other relationships concerning property held for a charitable purpose as to purpose, nature of assets, duration of the trust or other relationship, amount of assets, amounts to be devoted to charitable purposes, nature of trustee, or otherwise, and may establish different rules for the different classes as to time and nature of the reports required to the ends that:

(a) The Attorney General shall receive reasonably current, annual reports as to all charitable trusts or other relationships of a similar nature, which will enable the Attor-

ney General to ascertain whether they are being properly administered; and

(b) The annual reports do not unreasonably add to the expense of the administration of charitable trusts and similar relationships.

(3) The Attorney General may suspend the filing of reports as to a particular charitable trust or relationship for a reasonable, specifically designated time after the Attorney General has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that annual reports are not required for proper supervision by the Attorney General's office.

(4) A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship, if the account substantially complies with the rules of the Attorney General, may be filed as a report required by this section.

(5) The first report for a trust or similar relationship hereafter established, unless the filing thereof is suspended as provided in subsection (3) of this section, shall be filed not later than four months and 15 days following the close of the first calendar or fiscal year in which any part of the income or principal is authorized or required to be applied to a charitable purpose. Subsequent annual reports shall be submitted not later than four months and 15 days following the close of each calendar or fiscal year adopted by the charitable organization.

(6) The Attorney General shall make rules as to the time for filing reports, the contents thereof, and the manner of executing and filing them. The Attorney General may make additional rules and amend existing rules as necessary for the proper administration of ORS 128.610 to 128.769.

(7)(a) A charitable organization, when filing a report required under this section, shall pay a fee to the Department of Justice in accordance with a fee schedule established by the department by rule.

(b) The fee schedule shall consist of the following elements:

(A) A fee that the department shall set according to a scale graduated on the basis of the charitable organization's receipts and income during the time covered by the report, with a lower fee applying to lower receipts and income and a higher fee applying to higher receipts and income. The minimum applicable fee is \$10 and the maximum applicable fee is \$400.

(B) A fee based on a percentage of the fund balance the charitable organization has at the close of the organization's calendar or fiscal year. The department shall set the fee under this subparagraph at not more than

0.02 of one percent of the fund balance or \$2,000, whichever is less.

(c) The charitable organization shall pay a fee that consists of both elements set forth in paragraph (b) of this subsection at the time the organization files a report required under this section.

(d) In calculating the fee element set forth in paragraph (b)(B) of this subsection, the department may not include in the fund balance any fixed assets that the charitable organization uses for operations.

(e) The department shall ensure that the aggregate amount of fees paid under this section is sufficient to pay the department's expenses in administering ORS 128.610 to 128.769 and 128.801 to 128.898.

(8)(a) If the charitable organization does not pay the fee prescribed by rules adopted under subsection (7) of this section or fails to file a report by the date due, the charitable organization, in addition to the fee due, shall pay a delinquency fee in an amount the department specifies by rule. The department may increase the delinquency fee or charge additional delinquency fees based on the length of time the payment or report is delinquent.

(b) In addition to charging any delinquency fee required under paragraph (a) of this subsection, the Attorney General, in compliance with the procedures set forth in ORS chapter 183, may take either or both of these actions:

(A) Impose a civil penalty of not more than \$2,000 on any charitable organization that fails to file a delinquent report or fails to pay a delinquency fee or a fee due under subsection (7) of this section within 90 days after receiving notice of the delinquency; or

(B) Order any charitable organization to cease soliciting contributions until the charitable organization has paid a fee or delinquency fee imposed under this section or has filed a report required under this section.

(c) In any judicial review of the order of the Attorney General, the order shall be reversed or modified only if the court finds that the Attorney General lacked authority to issue the order or impose the penalty or that the amount of the penalty imposed was unconscionable in the circumstances.

(d) The Attorney General may grant an extension of time for a reasonable period for filing a report upon written application filed by or on behalf of the charitable organization stating the reason that additional time should be allowed for filing the report beyond the ordinary due date. If the request is submitted on or prior to the due date for filing the report, the delinquency fee described in paragraph (a) of this subsection will not

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be due unless the report and fee are thereafter not filed within the extended period granted for filing the report, or, if the request is denied, within 10 days after the denial is received by the corporation.

(9) All fees and penalties received by the Department of Justice under subsections (7) and (8) of this section shall be paid over to the State Treasurer monthly for deposit in the Department of Justice Operating Account created under the provisions of ORS 180.180. Amounts deposited pursuant to this subsection are continuously appropriated to the Attorney General to pay the expenses of the Department of Justice in administering ORS 128.610 to 128.769 and 128.801 to 128.898 and for no other purpose. [1963 c.583 §8; 1971 c.589 §7; 1973 c.506 §40; 1973 c.775 §4; 1975 c.388 §5; 1981 c.593 §7; 1985 c.730 §9; 1991 c.734 §7; 2007 c.571 §1; 2014 c.8 §3]

128.675 Violations of ORS 128.610 to 128.769; action by Attorney General for violation; fees; penalties. (1) The following acts and practices are violations of ORS 128.610 to 128.769:

(a) Operating in violation of, or failing to comply with, any requirement of ORS 128.610 to 128.769 or any rules promulgated under ORS 128.610 to 128.769, including but not limited to:

(A) Failing to file the registration statement required under ORS 128.660.

(B) Failing to file an annual report required under ORS 128.670.

(C) Failing to pay any fee required under ORS 128.670.

(b) Willfully making a false or misleading statement in a registration statement, annual report or other document required to be filed under ORS 128.610 to 128.769.

(c) Willfully failing to provide to the Attorney General, in a timely manner, upon request, documents, instruments, reports, records or other information necessary for the Attorney General to:

(A) Substantiate representations, statements or information contained in a registration statement, annual report or other document filed pursuant to ORS 128.610 to 128.769;

(B) Establish and maintain the register required under ORS 128.650; or

(C) Establish that a charitable organization has properly applied charitable funds received by the organization.

(d) Failing to appear or otherwise comply with an order issued under ORS 128.690.

(2) In addition to any other actions allowed by law, including but not limited to the actions described in ORS 128.670 (8), and in compliance with the procedures set forth

in ORS chapter 183, upon determining that a charitable organization has committed a violation specified in subsection (1) of this section, the Attorney General may, as appropriate, do one or more of the following:

(a) Deny, revoke, place conditions on or suspend the registration of the charitable organization after giving the organization written notice of the basis for the denial, revocation or suspension. If the organization does not correct or otherwise ameliorate the violation or request an administrative hearing within 90 days of receipt of the notice, the Attorney General shall take the action described in the written notice;

(b) Impose a civil penalty of not more than \$2,000 on the charitable organization or upon a charitable fiduciary responsible for the violation;

(c) Order the charitable organization to cease soliciting or accepting contributions, charitable donations or other payments for charitable purposes until the charitable organization has corrected the act or practice that violated ORS 128.610 to 128.769; or

(d) Order the charitable organization or responsible charitable fiduciary to submit or file additional information or documentation.

(3) All fees and penalties received by the Department of Justice under this section shall be paid over to the State Treasurer monthly for deposit in the Department of Justice Operating Account created under ORS 180.180. Amounts deposited pursuant to this subsection are continuously appropriated to the Attorney General to pay the expenses of the Department of Justice in administering ORS 128.610 to 128.769 and 128.801 to 128.898 and for no other purpose. [2014 c.8 §7]

128.680 Investigatory authority of Attorney General. The Attorney General may investigate transactions and relationships of charitable organizations subject to ORS 128.610 to 128.769 for the purpose of ascertaining whether or not the purposes of the charitable organization are being carried out in accordance with the terms and provisions of the articles of incorporation or other instrument, whether a person or organization has engaged in a violation of ORS 128.610 to 128.769 or whether such a person or organization has breached a fiduciary duty arising under the common law. The Attorney General may require any agent, trustee, fiduciary, beneficiary, institution, association or corporation, or other person to appear, at a named time and place, in the county designated by the Attorney General, where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts or dis-

bursments in the possession or control of the person ordered to appear. [1963 c.583 §10; 1971 c.589 §8; 1981 c.593 §9; 1985 c.729 §30; 1985 c.730 §11; 2007 c.571 §7]

128.690 Order for attendance by Attorney General; effect. When the Attorney General requires the attendance of any person, as provided in ORS 128.680, the Attorney General shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered or certified mail to the person at least 14 days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena and, upon application of the Attorney General, obedience to the order may be enforced by any court having jurisdiction of charitable trusts in the county where the trust may be in existence or administered or the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend or postpone all or any part of its provisions. [1963 c.583 §11]

128.700 [1963 c.583 §12; repealed by 1973 c.794 §34]

128.710 Enforcement; jurisdiction of court. (1) The Attorney General may institute appropriate proceedings to secure compliance with ORS 128.610 to 128.769 and to invoke the jurisdiction of the court. A court may issue a temporary, preliminary or permanent injunction to restrain violations of ORS 128.610 to 128.769 and may require a charitable organization or responsible charitable fiduciary to provide or pay for an accounting, or may order other appropriate relief. Willful failure to comply with an order of any court having jurisdiction of charitable trusts shall constitute grounds for removal of the officers, directors, trustees or other charitable fiduciary and the appointment by the court of successor officers, directors, trustees or other charitable fiduciaries. The powers and duties of the Attorney General provided in ORS 128.610 to 128.769 are in addition to existing powers and duties.

(2) Nothing in ORS 128.610 to 128.769 shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it, except that no court shall have jurisdiction to modify or terminate any trust of property for charitable purposes unless the Attorney General is a party to the proceedings. [1963 c.583 §13; 1971 c.589 §9; 1981 c.593 §10; 1985 c.729 §31; 1985 c.730 §12; 2014 c.8 §4]

128.720 Copies of certain documents and notice to be provided Attorney General. Every person who offers for probate any instrument which establishes a testa-

mentary trust of property for charitable purposes or who records in any county any inter vivos transfer of property for charitable purposes shall furnish a copy of such document to the Attorney General. Upon filing the final account and petition for a judgment of distribution of any estate through which a residuary testamentary trust for charitable purposes is established, the personal representative shall mail a copy thereof, and a copy of the notice fixing the time for filing objections thereto, to the Attorney General not less than 20 days before the time fixed in the notice. The custodian of the records of a court having jurisdiction of probate matters or of charitable trusts shall furnish such copies of papers, records and files of the office of the custodian relating to the subject of ORS 128.610 to 128.769 as the Attorney General requires. [1963 c.583 §15; 1971 c.589 §10; 2003 c.576 §385]

128.730 List of certain claims for exemptions from taxation to be provided Attorney General. Every officer, agency, board or commission of this state, receiving applications for exemption from taxation of any corporation, charitable trust or similar relationship in which the corporation or trustee is subject to ORS 128.610 to 128.769 shall annually file with the Attorney General a list of all applications received during the year. [1963 c.583 §16; 1971 c.589 §11]

128.735 Attorney fees in action to enforce fiduciary or other duty. (1) In any suit or action against a charitable organization or charitable fiduciary to enforce any fiduciary duty or other duty arising under ORS 128.610 to 128.769 or to enforce any fiduciary duty arising under the common law, the court in its discretion may award the prevailing party reasonable attorney fees at trial and on appeal and, as part of costs and disbursements, reasonable investigative expenses and reasonable expert witness fees.

(2) If the Attorney General prevails, the attorney fees, costs and disbursements of the Attorney General may, in the discretion of the court, be a judgment against the responsible charitable fiduciaries, or may be paid out of the corpus of the trust. [1985 c.730 §2; 2007 c.571 §6; 2014 c.8 §5]

128.740 [1963 c.583 §17; 1971 c.589 §12; repealed by 1975 c.388 §8]

128.750 Uniformity of interpretation. The Charitable Trust and Corporation Act, ORS 128.610 to 128.769, shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1963 c.583 §19; 1981 c.593 §11; 1985 c.730 §14]

128.760 Issuance of disqualification order by Attorney General; hearing request; legal effect. (1) The Attorney General may issue an order disqualifying a

charitable organization from receiving contributions that are deductible as charitable donations for the purpose of Oregon income tax and corporate excise tax if the Attorney General finds that the organization has failed to expend at least 30 percent of the organization's total annual functional expenses on program services when those expenses are averaged over the most recent three fiscal years for which the Attorney General has reports containing expense information. The calculation of program services expenses and total functional expenses shall be based on the amounts of program services expenses and total functional expenses identified by the organization in the organization's Internal Revenue Service Form 990 return or other Internal Revenue Service return required to be filed as part of the organization's report to the Attorney General.

(2) A charitable organization may request a contested case hearing within 60 days after notification from the Attorney General that the Attorney General proposes to issue a disqualification order under this section. Notwithstanding a finding that the charitable organization's program services expenses fall below the minimum percentage specified in subsection (1) of this section, the Attorney General may decline to issue a disqualification order if the organization establishes:

(a) That the organization made payments to affiliates that should be considered in calculating the organization's program services expenses;

(b) That the organization is accumulating revenue for a specific program purpose consistent with representations in solicitations; or

(c) Such other mitigating circumstances as may be identified by the Attorney General by rule.

(3) A disqualification order under this section remains in effect until such time as the charitable organization submits sufficient information to the Attorney General to demonstrate that the organization's program services expenses meet the minimum percentage specified in subsection (1) of this section. A charitable organization may submit information under this subsection no earlier than one year after the disqualification order becomes final, and may not submit information under this subsection more than once each year after the initial submission is made. The information submitted under this subsection must include all Internal Revenue Service Form 990 returns, or equivalent Internal Revenue Service returns, filed by the organization after the disqualification order became final.

(4) A disqualification order under this section may not be issued to:

(a) A private foundation as defined in section 509 of the Internal Revenue Code, as in effect on October 7, 2013;

(b) A community trust or foundation operating as described in 26 C.F.R. 1.170A-9(f)(10) and (11), as in effect on October 7, 2013;

(c) A qualified charitable remainder trust described in section 664 of the Internal Revenue Code, as in effect on October 7, 2013;

(d) An organization that does not qualify to receive tax deductible contributions;

(e) An organization that is not required to file annual reports with the Attorney General;

(f) An organization that is not required to file an Internal Revenue Service Form 990 return or an equivalent Internal Revenue Service return;

(g) An organization that receives less than 50 percent of the organization's total annual revenues from contributions or grants identified in accordance with Internal Revenue Service Form 990 or an equivalent form; and

(h) An organization that has been in existence for less than four years.

(5) When a disqualification order is issued under this section, the charitable organization that is the subject of the order does not qualify for and may not claim exemption from taxation under ORS 307.130 for the tax year following the tax year in which the order went into effect and subsequent tax years in which the order remains in effect. [2013 c.260 §2]

128.763 Disclosure of disqualification required in solicitations; legal effect of failure to disclose. (1) When a disqualification order issued under ORS 128.760 to 128.769 becomes effective, the charitable organization named in the order shall provide a disclosure as described in this section in all solicitations made by the organization to persons in Oregon. The disclosure must clearly and conspicuously state that contributions to the organization are not deductible as charitable donations for Oregon income tax purposes. The disclosure also must appear in any written document provided to a donor acknowledging the donation or referring to the amount of the donation. The Attorney General may specify additional disclosure requirements by rule.

(2) Failure to provide the disclosures required by this section is a false or misleading representation for the purposes of ORS 128.886. [2013 c.260 §3]

128.766 Publication of disqualified organizations on Internet; report to Department of Revenue.

(1) When a disqualification order issued under ORS 128.760 to 128.769 becomes effective, the Attorney General shall publish on the Internet and otherwise make publicly available information identifying the charitable organization named in the order, the date that the order became effective and the date that the information was published on the Internet.

(2) At least once every year the Attorney General shall file a written report with the Department of Revenue that:

(a) Identifies all charitable organizations that are subject to disqualification orders during the period covered by the report;

(b) The date the disqualification orders became effective;

(c) The date that information required by subsection (1) of this section was published on the Internet for each order; and

(d) The methods by which the public can obtain a listing of charitable organizations that are subject to disqualification orders. [2013 c.260 §4]

128.769 Rules. The Attorney General may adopt all rules necessary for the implementation of ORS 128.760 to 128.769. [2013 c.260 §5]

CHARITABLE SOLICITATIONS ACT**128.801 Definitions for ORS 128.801 to 128.898.** As used in ORS 128.801 to 128.898:

(1) “Charitable purpose” means any purpose to promote the well-being of the public at large, or for the benefit of an indefinite number of persons, including but not limited to educational, literary or scientific purposes, or for the prevention of cruelty to children or animals, or for the benefit of religion, rehabilitation services, public recreation, civic improvement or services which lessen the burdens of government.

(2) “Commercial fund raising solicitation” means the solicitation of funds for nonprofit beneficiaries, whether named or unspecified, through the sale of goods or services, whether the goods or services are delivered to a purchaser or donated to third parties, and where the solicitation is conducted by a commercial fund raising firm or commercial coventurer. If donors receive insubstantial items or other benefits in return for contributions, such a solicitation of funds is not a commercial fund raising solicitation if the items or benefits received are considered premiums and do not affect the deductibility of the contributions for federal income tax purposes. A solicitation is conducted by a commercial fund raising firm or commer-

cial coventurer if the soliciting agents are under the direction and control of a commercial fund raising firm or commercial coventurer; the fact that the solicitors are paid by the beneficiary is of no consequence.

(3) “Commercial coventurer” means any sole proprietorship, partnership, corporation or any other legal entity, organized for profit or formed as a nonprofit mutual benefit corporation, who is regularly and primarily engaged in trade or commerce in this state other than in conjunction with the raising of funds for nonprofit purposes and who conducts commercial fund raising solicitations on an infrequent basis.

(4) “Commercial fund raising firm” means any sole proprietorship, partnership, corporation or any other legal entity, organized for profit or formed as a nonprofit mutual benefit corporation, who, for compensation or other consideration regularly conducts commercial fund raising solicitations.

(5) “Professional fund raising firm” means any sole proprietorship, partnership, corporation or any other legal entity, organized for profit or as a nonprofit mutual benefit corporation, who, for compensation or other consideration, manages or conducts the solicitation of funds, not including commercial fund raising solicitations, on behalf of any nonprofit organization.

(6)(a) “Solicitation” means any oral or written request for a contribution, including the solicitor’s offer or attempt to sell any property, rights, services or other thing, in connection with which:

(A) The name of any nonprofit organization is used as an inducement for making the contribution or consummating the sale; or

(B) Any statement is made which implies that the whole or any part of the contribution or proceeds from the sale will be donated to any nonprofit organization.

(b) “Solicitation” does not include the making of any request or appeal on behalf of a candidate, political committee or measure as defined in ORS 260.005, unless the appeal states or implies that contributions will be used, in whole or in part, for a charitable purpose or includes a representation that a ticket to an event may be donated by a contributor to the solicitors for use by another. [1985 c.729 §3; 1991 c.532 §1]

128.802 Registration of professional fund raising firms required; fee; renewal; notice of change of information.

(1) No person shall act as a professional fund raising firm with respect to the solicitation of funds in this state on behalf of any nonprofit organization unless the professional fund raising firm is registered with the Attorney General.

(2) Applications for registration or reregistration shall be in writing, under oath, on a form prescribed by the Attorney General and shall be accompanied by a fee in the amount of \$250.

(3) The application shall contain such information as the Attorney General shall require and which is consistent with ORS 128.801 to 128.898, including:

(a) The address of the principal place of business of the applicant and any local addresses if the principal place of business is not located in the state.

(b) The form of the applicant's organization.

(c) The names and personal addresses of all principals of the organization, including all officers and all persons who own a 10 percent or more interest in the organization.

(4) Each registration is valid for one year and may be renewed for additional one-year periods upon application to the Attorney General and payment of the registration fee.

(5) The Attorney General shall be notified in writing of any change in the information contained in the application within seven days after the change occurs. [1991 c.532 §17]

128.804 Fund raising notice; contents.

(1) Prior to each solicitation campaign to be conducted in this state, where the services of a professional fund raising firm are employed, the firm shall file a completed fund raising notice on forms prescribed by the Attorney General. A copy of the written fund raising plan, described in ORS 128.807 and a copy of the written disclosure, when required by ORS 128.809, shall be attached to the notice.

(2) The fund raising notice shall be in writing, under oath, and shall include a description of the solicitation campaign, the projected starting date of the campaign, a description of the role of the firm, the bank account number and location where the solicited funds will be deposited, including the name of the organization or organizations that control the account and the address and telephone number of the headquarters for each campaign if different than the principal place of business identified on the firm's registration form, as well as the person in charge of each such location. If the solicitation is being conducted by agents of the firm, the notice shall include a provision affirming that the solicitation material has been approved by the nonprofit beneficiary. [1991 c.532 §18]

128.805 [1971 c.589 §14; 1981 c.593 §12; repealed by 1985 c.729 §1; 1985 c.730 §15]

128.806 [1985 c.729 §4; repealed by 1991 c.532 §26]

128.807 Required submission of financial plan to nonprofit beneficiary.

(1) A professional fund raising firm shall not participate in a solicitation campaign in this state without first submitting a written financial plan to the nonprofit beneficiary. A nonprofit organization, utilizing the services of a professional fund raising firm, shall not solicit in this state unless it has obtained such a written financial plan from the firm. The written financial plan shall provide a good faith projection of the total expenses and revenue for each solicitation campaign contemplated by the agreement with the nonprofit beneficiary.

(2) In the case of solicitation campaigns which are directed at targeted individual donors, such as in telemarketing or direct mail solicitations, the plan shall specify whether each campaign is directed toward new donor acquisitions, individual donor renewals or some combination thereof. [1991 c.532 §19]

128.809 Required disclosure of agency by solicitors.

No person shall engage in an in-person solicitation as an agent of a professional fund raising firm, including a face-to-face or telephone solicitation, unless it is disclosed orally in the course of the solicitation but prior to asking for a commitment for a contribution from the solicitee, and in writing to any solicitee that makes a pledge to be delivered within 10 days of the date of the pledge that the solicitor is operating under the direction and control of a named professional fund raising firm. [1991 c.532 §20]

128.810 [1959 c.599 §1; repealed by 1967 c.359 §704]

128.811 [1985 c.729 §5; repealed by 1991 c.532 §26]

128.812 Required submission of financial report after campaign.

Within 90 days after a solicitation campaign has been completed, unless funds are to be collected by the nonprofit beneficiary, the professional fund raising firm shall file with the Attorney General a financial report for the campaign, including gross receipts and all expenditures incurred in the solicitation campaign. The report shall be completed on a form prescribed by the Attorney General. The report shall be signed by an official of the professional fund raising firm and an official from each beneficiary and they shall certify, under oath, that it is true to the best of their knowledge. A similar interim financial report shall be filed one year after the start of the solicitation campaign in the case of a solicitation campaign still in progress on that date. [1991 c.532 §21]

128.813 [1975 c.388 §2; repealed by 1985 c.729 §1; 1985 c.730 §15]

128.814 Presumption of breach of fiduciary duty by officer or director of nonprofit beneficiary.

(1) There shall be a rebuttable presumption of a breach of

fiduciary duty if an officer or director of a nonprofit beneficiary enters into an agreement with a professional fund raising firm:

(a) For a duration to exceed two years unless the nonprofit beneficiary has obtained written proposals from at least two other professional fund raising firms; or

(b) Where one of the stated or implied purposes of the solicitation campaign is to acquire an identified list of donors for use as a donor base for future solicitations by the nonprofit beneficiary, unless the nonprofit beneficiary has exclusive rights to the ownership and use of the list of donors.

(2) It shall be presumed that such donor list acquisition is a purpose of the campaign unless the agreement specifies otherwise.

(3) This section shall not prohibit a professional fund raising firm from retaining a security interest in a list for the limited purpose of recovering amounts owed to it pursuant to the terms of the contract. [1991 c.532 §22]

128.815 [1971 c.589 §14a; 1981 c.593 §13; repealed by 1985 c.729 §1; 1985 c.730 §15]

128.816 [1985 c.729 §6; repealed by 1991 c.532 §26]

128.820 [1959 c.599 §§2,3,4,5; 1967 c.359 §125; renumbered 731.704]

128.821 Registration of commercial fund raising firms required; fee; renewal; notice of change in information. (1) No person shall engage in solicitations for contributions for or on behalf of a commercial fund raising firm unless the commercial fund raising firm is registered with the Attorney General.

(2) Applications for registration or reregistration shall be in writing, under oath, on a form prescribed by the Attorney General and shall be accompanied by a fee in the amount of \$250.

(3) The application shall contain such information as the Attorney General shall require and which is consistent with ORS 128.801 to 128.898, including:

(a) The address of the principal place of business of the applicant and any local addresses if the principal place of business is not located in the state.

(b) The form of the applicant's organization.

(c) The names and personal addresses of all principals of the organization, including all officers and all persons who own a 10 percent or more interest in the organization.

(4) Each registration is valid for one year and may be renewed for additional one-year periods upon application to the Attorney General and payment of the registration fee.

(5) The Attorney General shall be notified in writing of any change in the informa-

tion contained in the application within seven days after the change occurs. [1985 c.729 §7; 1991 c.532 §2]

128.823 Designation of amount to be paid to beneficiaries; manner of specification; minimum amount payable. (1) No person shall engage in commercial fund raising solicitations unless there is a designated amount to be paid to nonprofit beneficiaries. Where the nonprofit beneficiary is identified in the solicitation campaign, the amount shall be specified in a contract or letter of agreement with such a beneficiary. The amount shall be specified in terms of:

(a) An amount per unit of the goods or services to be purchased;

(b) A specified percentage of the gross funds solicited; or

(c) A good faith estimate of the gross funds solicited.

(2) Nonprofit beneficiaries shall receive no less than 90 percent of the designated estimate under subsection (1)(c) of this section. Any designated amount shall exclude any amount which the nonprofit beneficiary is to pay as expenses of the solicitation campaign, such as all costs of the goods or services sold or cost of fund raising events staged. [1991 c.532 §5]

128.824 Disclosures required in commercial fund raising solicitations. (1) All commercial fund raising solicitations shall include a clear and conspicuous disclosure of the identity of the commercial fund raising firm or commercial coventurer.

(a) In the case of a vending machine, it shall be disclosed on the device that the machine is owned and operated by the commercial fund raising firm or commercial coventurer.

(b) In the case of an in-person solicitation, including a face-to-face or telephone solicitation, it shall be disclosed orally in the course of the solicitation but prior to asking for a commitment for a contribution from the solicitee, and in writing to any solicitee that makes a pledge to be delivered within 10 days of the date of the pledge that the solicitor is operating under the direction and control of a named commercial fund raising firm or commercial coventurer.

(c) In the case of a solicitation by advertisement or mass distribution, including posters, leaflets, automatic dialing machines, publications and audio or video broadcasts, it shall be disclosed in the body of the solicitation material that the product or service is marketed by a named commercial fund raising firm or commercial coventurer.

(2) All commercial fund raising solicitations shall include a clear and conspicuous

disclosure of the amount of the solicited funds to be paid to the nonprofit beneficiary as provided in ORS 128.823.

(a) In the case of a vending machine, the disclosure shall be on the device.

(b) In the case of an in-person solicitation, including a face-to-face or telephone solicitation, the disclosure shall be in the form of a written statement to any solicitee who makes a pledge, to be delivered within 10 days of the date of the pledge.

(c) In the case of a solicitation by advertisement or mass distribution, the disclosure shall be in the body of the solicitation material. [1991 c.532 §6]

128.825 [1971 c.589 §15; repealed by 1985 c.729 §1; 1985 c.730 §15]

128.826 Commercial fund raising contracts and notice; filing. (1) At least 10 days prior to the commencement of each commercial fund raising solicitation campaign, a commercial fund raising firm shall file with the Attorney General a completed fund raising notice on forms prescribed by the Attorney General. A copy of the contract or letter of agreement with any beneficiary and a copy of the disclosure material required by ORS 128.824 shall be attached to the notice.

(2) The fund raising notice shall be in writing, under oath, and shall include a description of the fund raising event or campaign, the projected starting and ending dates of the campaign, the bank account number and location where the solicited funds will be deposited, including the name of the organization or organizations that control the account, and the address and telephone number of the headquarters for each commercial solicitation campaign if different than the principal place of business identified on the commercial fund raising firm's registration form as well as the person in charge of each such location. The notice shall include a provision affirming that the disclosure material described in subsection (1) of this section has been affirmed by all beneficiaries. [1985 c.729 §8; 1991 c.532 §3]

128.830 [1959 c.599 §7; 1967 c.359 §126; renumbered 731.708]

128.831 [1985 c.729 §9; repealed by 1991 c.532 §26]

128.835 [1971 c.589 §16; 1981 c.593 §14; repealed by 1985 c.729 §1; 1985 c.730 §15]

128.836 [1985 c.729 §10; repealed by 1991 c.532 §26]

128.840 [1959 c.599 §6; repealed by 1967 c.359 §704]

128.841 Commercial fund raising firm financial reports; contents; filing. Within 90 days after a commercial fund raising solicitation campaign has been completed, the commercial fund raising firm shall file with the Attorney General a financial report for the campaign, including gross receipts and

all expenditures incurred in the solicitation campaign. The report shall be completed on a form prescribed by the Attorney General. The report shall be signed by an official of the commercial fund raising firm and an official from each beneficiary and they shall certify, under oath, that it is true to the best of their knowledge. A similar interim financial report shall be filed one year after the start of the solicitation campaign in the case of a solicitation campaign still in progress on that date. [1985 c.729 §11; 1991 c.532 §7]

128.845 [1971 c.589 §17; 1981 c.593 §15; repealed by 1985 c.729 §1; 1985 c.730 §15]

128.846 Maintenance of records by commercial fund raising firm. (1) A commercial fund raising firm shall maintain for a period of not less than three years from the completion of each fund raising campaign, the following records:

(a) The name and address of each contributor and the date and amount of the contribution, if the preceding is known to the commercial fund raising firm.

(b) The name and address of each paid solicitor and the dates and amount of compensation paid to each such solicitor.

(c) Records of all fund raising expenses incurred in the course of the fund raising campaign.

(2) If the commercial fund raising firm sells tickets to an event and represents that tickets will be donated for use by another, the commercial fund raising firm shall also maintain, for the same period as specified in subsection (1) of this section, the following records:

(a) The name and address of those contributors donating tickets and the number of tickets donated by each contributor; and

(b) The name and address of all organizations receiving donated tickets, including the number of tickets received by each organization.

(3) All records described in this section shall be available for inspection by the Attorney General upon request. [1985 c.729 §12; 1991 c.532 §8]

128.848 Accountings required of commercial coventurer. A commercial coventurer shall keep a final accounting for each commercial fund raising solicitation that it conducts for a period of three years following the completion of the campaign. A commercial coventurer shall provide such an accounting for each commercial fund raising solicitation it conducts not later than 20 days after it is requested by the Attorney General or any nonprofit beneficiary. [1991 c.532 §16]

128.850 [1959 c.599 §8; 1967 c.359 §128; renumbered 731.716]

128.851 [1985 c.729 §13; repealed by 1991 c.532 §26]

128.855 [1975 c.388 §3; 1977 c.467 §1; repealed by 1985 c.729 §1; 1985 c.730 §15]

128.856 Written consent by beneficiary to use of name. No person, other than volunteers or employees under the direction and control of a nonprofit beneficiary, shall represent that any part of the contributions received will be given or donated to any named nonprofit beneficiary unless such organization has consented in writing to the use of its name, prior to the solicitation. The written consent shall be signed by an officer, director or trustee of the organization. [1985 c.729 §14; 1991 c.532 §9]

128.860 [1959 c.599 §11; 1967 c.359 §129; renumbered 731.720]

128.861 Written consent required for representations about use of tickets. A commercial fund raising firm shall not represent, in the course of its solicitation activities, that tickets to events will be donated for use by another unless it has complied with the following requirements:

(1) The commercial fund raising firm shall obtain commitments, in writing, from beneficiaries stating that they will accept donated tickets and specifying the number of tickets they are willing to accept;

(2) The commercial fund raising firm shall solicit and accept no more contributions of donated tickets than the number of ticket commitments it has received from beneficiaries; and

(3) A ticket commitment alone, as described in this section, shall not constitute written consent to use the organization's name as described in ORS 128.856. [1985 c.729 §15; 1991 c.532 §10]

128.865 [1975 c.388 §4; 1981 c.897 §37; repealed by 1985 c.729 §1; 1985 c.730 §15]

128.866 Injunction by Attorney General. The Attorney General may obtain an injunction against solicitation of contributions until:

(1) The charitable organization, beneficiary, professional fund raising firm or commercial fund raising firm has complied with all registration and reporting requirements of the Charitable Solicitations Act and ORS 128.610 to 128.769; or

(2) Breaches of fiduciary duties have been corrected and the officers and directors responsible for the breaches have been removed. [1985 c.729 §17; 1991 c.532 §11; 2003 c.40 §3]

128.870 [1959 c.599 §12; repealed by 1967 c.359 §704]

128.871 Denial or revocation of registration. Subject to ORS chapter 183, the Attorney General may deny registration or revoke any registration issued pursuant to ORS 128.802 or 128.821 for a period not to

exceed five years, if the Attorney General finds:

(1) A material misrepresentation or false statement to be in the application for registration or any other statement filed with the Attorney General as provided in ORS 128.801 to 128.898 and 128.995.

(2) Any material violation of ORS 128.801 to 128.898 or the rules adopted by the Attorney General pursuant to ORS 128.801 to 128.898 and 128.995. [1985 c.729 §23; 1991 c.532 §12]

128.876 Rules. The Attorney General shall make rules as to the filing and execution of reports and registration statements required by ORS 128.610 to 128.650, 128.680, 128.710, 128.801 to 128.898, 128.995 and 646.608 and to the contents thereof. The Attorney General may make additional rules and amend existing rules as necessary for the proper administration of the Charitable Solicitations Act. [1985 c.729 §18; 2003 c.14 §46]

128.880 [1959 c.599 §9; 1967 c.359 §130; renumbered 731.724]

128.881 Deposit of fees and penalties; use. All fees and penalties received by the Department of Justice under ORS 128.802 and 128.821 shall be paid over to the State Treasurer monthly for deposit in the Department of Justice Operating Account created under the provisions of ORS 180.180. Amounts deposited pursuant to this section are continuously appropriated to the Attorney General to pay the expenses of the Department of Justice in administering the Charitable Trust and Corporation Act as established in ORS 128.610 and the Charitable Solicitations Act. [1985 c.729 §20; 1991 c.532 §13]

128.886 False or misleading representations prohibited. (1) No person shall make any false or misleading representations in the course of any solicitation of contributions.

(2) A representation may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

(3) No person shall have a cause of action under ORS 646.638 for an alleged violation of any provision of this section if the alleged false or misleading representation is made by a volunteer of an organization which is exempt from federal taxation under section 501(c) of the Internal Revenue Code of 1954, as amended, and the alleged false or misleading representation is not made at the direction of paid personnel. [1985 c.729 §16; 1989 c.913 §2; 1991 c.532 §14]

128.890 [1959 c.599 §10; repealed by 1967 c.359 §704]

128.891 Prohibited representations; written notice. (1) No solicitation for contributions shall in any way use the fact or requirement of registration, or any filing of

any report pursuant to the Charitable Solicitations Act or ORS 128.610 to 128.769, with the intent to cause or in a manner tending to cause any person to believe that such solicitation, the manner in which it is conducted, its purposes, any use to which the proceeds will be applied, or the person or organization conducting it have been or will be in any way indorsed, sanctioned or approved by the Attorney General or any other governmental agency or office.

(2) Any written or oral statement made in connection with a solicitation of contributions that the person or organization conducting the solicitation is registered or has filed, will file or is required to file any report with the Attorney General, or any statement of similar import, shall be immediately followed by a statement of equal prominence that such registration or report in no way constitutes or implies any indorsement, sanction or approval of the solicitation, its purposes, the manner in which it is conducted or the person or organization conducting it, by the Attorney General or any other governmental agency or officer. [1985 c.729 §19]

128.893 Use of in-state address. (1) A person may not use an address in this state, including a return address, in a solicitation, or in written material issued in connection with a solicitation, made on behalf of a non-profit organization unless:

(a) The nonprofit organization actually maintains and staffs an office in this state; or

(b) The solicitation, or written material issued in connection with a solicitation, discloses:

(A) The address of the actual headquarters of the nonprofit organization; and

(B) That the address in this state is a mail drop or that the address in this state is solely the address of a mail handling facility.

(2) If the disclosures described in subsection (1) of this section are required in a

written solicitation, or in written material issued in connection with a solicitation, the disclosures shall be printed immediately proximate to the address in this state and in a location and typeface no less prominent than the address in this state. [2003 c.40 §2]

128.896 [1985 c.730 §13; 1991 c.734 §8; renumbered 128.899 in 1991]

128.898 Short title. ORS 128.801 to 128.898 and 128.995 may be cited as the Charitable Solicitations Act. [1985 c.729 §2]

128.899 [Formerly 128.896; repealed by 2014 c.8 §8]

128.990 [1959 c.639 §3; subsections (2), (3), (4) enacted as 1971 c.589 §18; 1975 c.388 §7; 1981 c.593 §16; 1985 c.729 §21; 1987 c.813 §13; renumbered 97.992 in 2001]

128.991 [1987 c.813 §9; 1993 c.467 §4; 1995 c.325 §3; 2001 c.796 §19; renumbered 97.994 in 2001]

CRIMINAL PENALTIES

128.992 Penalties for ORS 128.610 to 128.769. Filing or assisting in preparing or filing a statement or report required by the Charitable Trust and Corporation Act, ORS 128.610 to 128.769, that is false or fraudulent is a Class A misdemeanor. [1985 c.730 §3]

128.993 Penalty for signing false document. (1) A person commits the crime of signing a false document for filing if the person:

(a) Knows the document is false in any material respect; and

(b) Signs the document with an intent that the document be delivered to the office of the Secretary of State for filing under ORS 128.560 to 128.600.

(2) Signing a false document for filing is a Class A misdemeanor. [2013 c.158 §14]

128.995 Penalties for ORS 128.801 to 128.898. Violation of ORS 128.802, 128.821 or filing or assisting in preparing or filing a statement or report required by ORS 128.801 to 128.898 that is false or fraudulent is a Class A misdemeanor. [1985 c.729 §24; 1991 c.532 §23]